

Internal Revenue Service

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Department of the Treasury

Washington, DC 20224

Third Party Communication: None

Date of Communication: Not Applicable

Person To Contact:

, ID No.

Telephone Number:

Refer Reply To:

CC:INTL:6

PLR-124509-06

Date:

July 11, 2006

In re:

LEGEND

Taxpayer =
Parent =
Individual A =
Date 1 =
Date 2 =
Date 3 =
Date 4 =
Date 5 =
CPA Firm =
Tax Year One =

Dear :

This replies to your letter dated March 15, 2006, in which you request on behalf of Taxpayer an extension of time under Treas. Reg. § 301.9100-3 to file the election as required under section 992(b)(1)(A) and Temp. Treas. Reg. § 1.921-1T(b)(1) for Tax Year One. The information submitted for consideration is substantially as set forth below.

Taxpayer is a domestic corporation that was incorporated on Date 1, and is wholly-owned by Parent, a domestic corporation. CPA Firm recommended that Taxpayer elect treatment as a domestic international sales corporation ("DISC") pursuant to sections 991 through 997 of the Internal Revenue Code. Individual A is

Taxpayer's executive vice president.

CPA Firm was aware of the requirements that Taxpayer needed to satisfy under Temp. Treas. Reg. § 1.921-1T(b)(1) to qualify as a DISC for Tax Year One. In particular, CPA Firm correctly understood that the deadline to elect to be a DISC under section 992(b) was Date 2. CPA Firm completed Form 4876-A ("Election to be Treated as an Interest Charge DISC") on behalf of Taxpayer and submitted the form to Taxpayer on Date 3 under the assumption that Taxpayer would sign the form and file it with the Service. The form was delivered to the attention of Individual A on Date 4 at Parent's receiving dock where an employee of Parent signed for the document. The form was never actually delivered to Individual A.

At the end of Date 5, during an annual bookkeeping review, it was discovered that a signed Form 4876-A was not on file with either Taxpayer or CPA Firm. Taxpayer had assumed that Form 4876-A was prepared and filed by CPA Firm as part of the organization proceedings of Taxpayer, and CPA Firm had assumed that Taxpayer had received Form 4876-A and filed the election with the Service. This mutual misunderstanding led to the failure to file an election to be treated as a DISC under Temp. Treas. Reg. § 1.921-1T(b)(1). When Individual A became aware of the situation, Individual A contacted CPA Firm. CPA Firm advised Taxpayer to request an extension under Treas. Reg. § 301.9100-3(a) to file the required election on Form 4876-A effective Date 1.

Section 992(b)(1)(A) provides:

An election by a corporation to be treated as a DISC shall be made by such corporation for a taxable year at any time during the 90-day period immediately preceding the beginning of the taxable year, except that the Secretary may give his consent to the making of an election at such other times as he may designate.

The second and third sentences of Temp. Treas. Reg. § 1.921-1T(b)(1)(Answer 1) provide:

A corporation electing interest charge DISC status must file Form 4876A. A corporation electing to be treated as a FSC, small FSC, or interest charge DISC for its first taxable year shall make its election within 90 days after the beginning of that year.

Treas. Reg. § 301.9100-1(c) provides, in part:

The Commissioner, in exercising the Commissioner's discretion, may grant a reasonable extension of time under the rules set forth in §§301.9100-2 and 301.9100-3 to make a regulatory election . . . under all subtitles of the Internal Revenue Code except subtitles E, G, H, and I.

Treas. Reg. § 301.9100-1(b) provides that a regulatory election is:

an election whose due date is prescribed by a regulation published in the Federal Register, or a revenue ruling, revenue procedure, notice, or announcement published in the Internal Revenue Bulletin. . . .

For this purpose, an election "includes an application for relief in respect of tax." Treas. Reg. § 301.9100-1(b). Treas. Reg. § 301.9100-3(a) provides, in part:

Requests for extensions of time for regulatory elections that do not meet the requirements of §301.9100-2 must be made under the rules of this section. Requests for relief subject to this section will be granted when the taxpayer provides the evidence (including affidavits described in paragraph (e) of this section) to establish to the satisfaction of the Commissioner that the taxpayer acted reasonably and in good faith, and the grant of relief will not prejudice the interests of the Government.

In the present situation, the election described in the second and third sentences of Temp. Treas. Reg. § 1.921-1T(b)(1)(Answer 1) is a regulatory election as defined in Treas. Reg. § 301.9100-1(b). Therefore, the Commissioner has discretionary authority under Treas. Reg. § 301.9100-1(c) to grant Taxpayer an extension of time, provided that Taxpayer satisfies the standards for relief set forth in Treas. Reg. § 301.9100-3(a). Based on the facts and information submitted, we conclude that Taxpayer satisfies Treas. Reg. § 301.9100-3(a). Accordingly, Taxpayer is granted an extension of time of 60 days from the date of this ruling letter to file the election described in Temp. Treas. Reg. § 1.921-1T(b)(1) for Tax Year One.

The granting of an extension of time is not a determination that Taxpayer is otherwise eligible to file the election or to claim DISC status or benefits. A copy of this ruling letter should be associated with the election.

The ruling contained in this letter is predicated upon facts and representations submitted by Taxpayer and accompanied by a penalty of perjury statement executed by

an appropriate party. This office has not verified any of the material submitted in support of the request for a ruling. Verification of the factual information, representations, and other data may be required as a part of the audit process.

This ruling is directed only to the taxpayer that requested it. Section 6110(k)(3) provides that it may not be used or cited as precedent. No ruling has been requested, and none is expressed, as to the application of any other section of the Code or regulations to the facts presented.

Pursuant to a power of attorney on file in this office, a copy of this ruling letter is being furnished to your authorized representatives.

Sincerely,

Christopher J. Bello
Senior Technical Reviewer, Branch 6
Office of the Associate Chief Counsel
(International)

Enclosure
Copy for 6110 purposes